

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5260 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

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RASIKBHAI DHULABHAI SODHA (PARMAR)

Versus

COMMISSIONER OF POLICE AHMEDABAD.

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Appearance:

MR ANIL S DAVE for Petitioner

Mr.Gohil, A.G.P. for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 04/02/99

ORAL JUDGEMENT

1. The prayer of the petitioner in this writ petition under Article 226 of the Constitution of India is to quash the detention order dated 25.6.1998 (Annexure : C) passed by the Commissioner of Police, Ahmedabad, under Section 3(2) of the Prevention of Anti-Social Activity Act (for short 'PASA') and for immediate release of the petitioner from illegal detention.

2. From the grounds of detention it appears that after considering registration of four cases under various sections of the Bombay prohibition Act and statements of two confidential witnesses the detaining Authority arrived at subjective satisfaction that the

petitioner is a bootlegger within the meaning of Section 2(b) of the PASA and his activities are prejudicial for maintenance of public order. Accordingly the detention order was passed.

3. The impugned order is challenged only on one ground that from the activities of the petitioner it can hardly be said that he indulged in such activities which were prejudicial for maintenance of public order. This implies that subjective satisfaction of the detaining Authority that the petitioner is a bootlegger is not under challenge nor it could successfully be challenged in view of registration of four cases against the petitioner under various sections of the Bombay Prohibition Act.

4. A bootlegger cannot be preventively detained merely because of his engagement in bootlegging business. Unless his activities associated with bootlegging are such which are prejudicial for maintenance for public order no preventive detention order can be passed against such person. The detaining Authority in Para : 7 of the Counter Affidavit has mentioned that he has kept in mind the distinction between law and order and public order but it seems from the material on record that he has absolutely no idea of settled distinction between law and order and public order as has been laid down time and again by the Apex Court.

5. The incidents narrated by the two witnesses have been examined. Even on the face value of these statements it is difficult to arrive at subjective satisfaction that these activities were prejudicial for maintenance of public order. Besides the statements being improbable no reasonable man would say that these activities which were confined between individuals had the effect and potentiality of disturbing public order in the area or in the locality nor it can be said that by these alleged activities of the petitioner even tempo of the life of the locality or community was disturbed. Consequently there was hardly any material before the detaining Authority to arrive at subjective satisfaction that the activities of the petitioner were prejudicial for maintenance of public order.

6. Four registered cases under the Bombay Prohibition Act were cases relating to breach of provisions of Bombay Prohibition Act meaning thereby that these were instances where situation of law and order was involved and not situation prejudicial for maintenance for public order.

7. In view of aforesaid discussions the impugned order of detention passed against the petitioner cannot be sustained. The writ petition, therefore, succeeds and is hereby allowed. The impugned order dated 25.6.1998 is hereby quashed. The petitioner shall be released forthwith from custody unless wanted in some other case.

sd/-

Date : February 04, 1999 ( D. C. Srivastava, J.)

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